

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DARREL JENKINS,

Plaintiff,

VS.

JOHN TROST, *et al.*,

Defendants.

Case No. 15-cv-00253-JPG-DGW

MEMORANDUM AND ORDER

This matter comes before the court on the Report and Recommendation (“R & R”) (Doc. 43) of Magistrate Judge Donald G. Wilkerson with regard to Defendant Dr. John Trost’s Motion (Doc. 28) for Summary Judgment. The Plaintiff filed a timely objection to the R & R (Doc. 44).

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. The Court has discretion to conduct a new hearing and may consider the record before the magistrate judge anew or receive any further evidence deemed necessary. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

In this matter, the plaintiff has filed an objection stating that he attempted to exhaust his administrative remedies, “to the best of his knowledge and access.” (Doc. 44, pg 1). He further states that the medication he was taking (which is an issue in this matter), “kept him passing out, in and out of the hospital, nauseated, and disoriented.” (Doc. 44, pg 2.)

He further argues that he never received a copy of the defendant's motion. The docket indicates that the Court was aware of the transfer and provided the plaintiff additional time to

respond. However, the docket indicates that the order extending the response time was sent to the plaintiff, but there is no indication that the defendant's motion was resent to the plaintiff at his new facility.

Given the question of the plaintiff's health and whether the plaintiff even received a copy of the defendant's motion, the Court believes that a hearing in accordance with *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008) is warranted.

Therefore, the Court is **DEFERRING** its ruling on Defendant Dr. John Trost's Motion (Doc. 28) for Summary Judgment and **DIRECTING** Magistrate Judge Wilkerson to conduct a *Pavey* hearing in this matter. Upon completion of the hearing, the Court is requesting that the Magistrate Judge supplement his R & R and allow the plaintiff sufficient time to respond to the supplement.

IT IS SO ORDERED.

DATED: 9/21/2016

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE